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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

ODIS WILEY, JR.,

Defendant and Appellant.

F057133

(Super. Ct. No.BF22997A )

**ORDER MODIFYING OPINION  
AND DENYING REHEARING  
[NO CHANGE IN JUDGMENT]**

**BY THE COURT:**

It is ordered that the opinion filed herein on May 6, 2010, be modified as follows:

On page 18, the following new part “III” of the opinion is inserted after the end of part “II” and preceding the “Disposition”:

**III.**

**PENAL CODE SECTION 4019 AMENDMENTS**

Under Penal Code section 2900.5, a person sentenced to state prison for criminal conduct is entitled to credit against the term of imprisonment for all days spent in custody before sentencing. (§ 2900.5, subd. (a).) In addition, Penal Code section

4019 provides that a criminal defendant may earn additional presentence credit against his or her sentence for willingness to perform assigned labor (§ 4019, subd. (b)) and compliance with rules and regulations (§ 4019, subd. (c)). These forms of Penal Code section 4019 presentence credit are called, collectively, conduct credit. (*People v. Dieck* (2009) 46 Cal.4th 934, 939, fn. 3.)

The court sentenced appellant in February 2009, and calculated appellant's conduct credit in accord with the version of Penal Code section 4019 then in effect, which provided that conduct credit could be accrued at the rate of two days for every four days of actual presentence custody. (Former § 4019.) However, the Legislature amended Penal Code section 4019 effective January 25, 2010, to provide that any person who is not required to register as a sex offender and is not being committed to prison for, or has not suffered a prior conviction of, a serious felony as defined in Penal Code section 1192.7 or a violent felony as defined in Penal Code section 667.5, subdivision (c), may accrue conduct credit at the rate of four days for every four days of presentence custody.

This court, in its "Order Regarding Penal Code section 4019 Amendment Supplemental Briefing" of February 11, 2010, ordered that in pending appeals in which the appellant is arguably entitled to the benefit of the more generous conduct credit accrual provisions of the 2010 amendment to Penal Code section 4019, we would deem raised, without additional briefing, the contention that prospective-only application of the amendment is contrary to the intent of the Legislature and violates equal protection principles. We deem these contentions raised here.

As this court explained in the recent case of *People v. Rodriguez* (2010) 182 Cal.App.4th 535, mod. (Mar. 30, 2010, F57544) \_\_Cal.App.4th \_\_, the 2010 amendment does not operate retroactively and does not violate the constitutional guarantee of equal protection of the laws. Appellant is, therefore, not entitled to additional conduct credit under that amendment.

There is no change in the judgment.

Appellant's petition for rehearing is denied.

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P.J.